Supreme Court, U.S.
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No. 01-272

In The

Supreme Court of the United States

STEPHEN SIMON,

Petitioner,

v.

BELWITH INTERNATIONAL, INC., EMPLOYEE BENEFIT PLAN, BABCOCK INDUSTRIES INC. GROUP HEALTH PLAN, BABCOCK INDUSTRIES INC., FKI INDUSTRIES INC., ELAINE DRURY, individually and as Plan Administrator, JANET HOLTON, individually and as Plan Administrator, GARRIE WARREN, individually and as Plan Administrator,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION

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I. CASE HISTORY

Petitioner brought an action in the United States District Court for the Western District of Michigan in which he raised claims against respondents arising under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq. The District Court correctly dismissed petitioner's claims for failure to state a claim upon which relief can be granted because petitioner is not a "participant," "beneficiary" or a "health care provider" assignee as defined by ERISA. He therefore lacks standing to maintain this action. The District Court dismissed petitioner's claims, and the Sixth Circuit affirmed the dismissal. The Sixth Circuit also denied petitioner's Petition for Rehearing En Banc and his Motion for Stay of Mandate.

II. PETITIONER'S STATEMENT OF THE CASE CONTAINED MISSTATEMENTS.

A. Petitioner Erroneously Stated That The Sixth Circuit's Ruling In This Case Established A Split Among The Circuits.

Petitioner asserts that the Sixth Circuit's reliance on *Simon v. Value Behavioral Health, Inc.*, 208 F.3d 1073 (9th Cir. 2000), *cert. denied*, 531 U.S. 1104 (2001), "established a split amongst the circuits and, as such, is ripe for consideration before Supreme Court of the United States." By petitioner's own description of the reliance and certainly as indicated by the Sixth Circuit opinion, the Sixth Circuit decision in this case is consistent with the Simon Ninth Circuit case so that no split, but rather synergy, exists. As discussed more fully below, the law across the circuits is

consistent that a third party, non-health care provider assignee (and specifically, Stephen Simon) does not have standing to bring ERISA claims.

B. The District Court Appropriately Considered Petitioner's Pleadings And Allegations.

Petitioner claims that the lower courts "failed or refused to acknowledge," "ignored" and "distorted" petitioner's allegations and the facts of the case. In addition, petitioner claims that the District Court failed to extend liberal construction to his pro se pleadings. These claims of District Court and Sixth Circuit misconduct by petitioner amount to no more than that those Courts did not agree with him.

The District Court appropriately considered all facts in the light most favorable to petitioner as the non-moving party. In fact, the District Court accepted petitioner's primary assertion as true that he was an assignee of claims against respondents. The District Court determined however as a matter of law that the assignment did not result in standing to bring the ERISA claims. Accordingly, the District Court did construe petitioner's pleadings liberally and did accept petitioner's factual allegations as true, but found them insufficient to state a claim. The Sixth Circuit similarly considered petitioner's allegations and reached the same legal conclusion that petitioner lacks standing.

Other than assertions that the Courts did not recognize his assignment and therefore his standing to bring ERISA claims, petitioner's only specific argument of lower courts' alleged distortion of the record is based on

the Sixth Circuit's statement that the "District Court permitted Simon to file one amended complaint." Petitioner claims that he filed the amended complaint without Court intervention so that the "permitted" language in the Sixth Circuit opinion is a distortion of the record. Petitioner filed the First Amended Complaint prior to service of the complaint so that a motion for leave to amend was not required. Fed R. Civ. P. 15(a). However, the Court administered this case pursuant to the Federal Rules of Civil Procedure and therefore permitted the amendment of complaints through application of the rules. Furthermore, the fact remains, and the Sixth Circuit was attempting to emphasize, that petitioner did amend his complaint.

Even more important but omitted by Petitioner is the further reasoning of the Sixth Circuit in rejecting Petitioner's claimed error by the District Court in not permitting further amendment. The Sixth Circuit held:

> Simon thereafter did not move again for leave to amend, nor attempt to file a second amended complaint. Consequently, the court had no duty to act sua sponte and grant Simon leave to file a second amended complaint.

Simon v. Belwith International, Inc., No. 00-1680 at 2 (6th Cir. 2001). The Sixth Circuit therefore rejected petitioner's claimed error of denying further amendments due to petitioner's failure to request or attempt to file further amendments, and not because an amended complaint had been previously permitted.

III. REASONS FOR DENYING THE PETITION

A. No Conflict Among The Circuits Exists To Support The Exercise Of Certiorari Jurisdiction.

Petitioner cites an intra-circuit conflict between *"Simon vs. Value"* and *"Simon vs. Davidowitz"* as the sole reason for granting a writ of certiorari in this matter. First, the alleged conflict asserted by petitioner does not even involve this case, but rather involves two 9th Circuit cases.[1] The alleged conflict not involving this case cannot support the exercise of certiorari in this matter.

In addition, the **intra-circuit** conflict alleged does not support the exercise of certiorari jurisdiction. Rule 10 of the Supreme Court Rules indicates the character of reasons considered by the Court in determining whether to grant a writ of certiorari. Concerning conflicts between courts, Rule 10 states that the Court considers granting Certiorari if "a United States court of appeals has entered a decision **in conflict with *another* United States court of appeals on the same important matter.**" Sup. Ct. R. 10(a) (emphasis added). At most, petitioner asserts that there is a conflict among decisions issued by **the same** court of appeals which is not a basis for granting the Petition for Writ of Certiorari.

Furthermore, even considering the cases to which petitioner appears to cite,[2] there is no conflict between the cases. Rather, the cases involved different facts but reached the

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[1] Petitioner previously sought and was denied certiorari in the *Simon v. Value Behavioral Health*, 531 U.S. 1104 (2001).

[2] It appears that Petitioner has misidentified *Davidowitz v. Delta Dental Plan, Inc.*, 946 F.2d 1478 (9th Cir. 1991) as *"Simon vs. Davidowitz."*

same conclusion that the assignees did not have standing to pursue ERISA claims. Similar to this case, the *Value Behavorial Health* case involved claims by Stephen Simon as a third-party, non-health care provider assignee. *Simon v. Value Behavorial Health*, 208 F.2d 1073. However, *Davidowitz* involved claims by health care provider assignees. *Davidowitz*, 946 F.2d at 1477. In *Value Behavioral Health*, the Ninth Circuit held that non-health care provider assignees did not have standing to pursue ERISA claims. *Value Behavorial Health, supra*. In *Davidowitz*, the Ninth Circuit held that health care providers were not valid assignees due to a specific prohibition of assignments by plan documents and therefore did not have standing to pursue ERISA claims. *Davidowitz* at 1481. Accordingly, the *Value Behavioral Health* and *Davidowitz* cases do not conflict and do not support the exercise of certiorari jurisdiction.

B. Petitioner's Questions Presented Also Fail To Support Certiorari.

The petitioner's argumentative questions presented also fail to set forth any basis for granting a writ of certiorari. The questions presented by petitioner appear to be primarily claims that the District Court erred in finding he had no standing to bring assigned ERISA benefit claims (Questions I-VI, VII-X). Petitioner also stated a question presented concerning the District Court's retention of jurisdiction regardless of whether petitioner is determined real party in interest. In addition, petitioner challenged the lower courts' refusal to

permit amendment of pleadings and alleged misstatement and distortion of facts.

None of these issues stated within the Questions Presented are supported in the Petition for Writ of Certiorari. Even if the issues were supported, these questions show only that petitioner is seeking a further hearing after defeat in the Sixth Circuit. Petitioner has made no showing of any decision on any important federal question in conflict with a decision of a state court of last resort, or departure from accepted judicial procedure sufficient to require supervision by this Court. Accordingly, none of the reasons set forth in Rule 10 of the Supreme Court Rules, nor any reasons of similar character, are set forth within the questions presented or the petition to support certiorari.

C. The District Court And The Sixth Circuit Properly Applied Statutory Provisions And Well-Established Case Law.

The District Court and the Sixth Circuit properly determined that petitioner, as the assignee of providers who were in turn assignees of the plan participants or beneficiaries, was not a person authorized to sue for benefits by 29 U.S.C. § 1132(a)(1)(B) (ERISA). ERISA § 1132 limits the persons authorized to bring a civil action to recover benefits to plan "participants" and "beneficiaries." Petitioner was neither. Nor was he a "health care provider" assignee with standing to sue. *Simon v. Value Behavioral Health*, 208 F.3d 1073. Therefore, both the District and the 6th Circuit correctly ruled that petitioner

had no standing as an assignee to pursue his claims against Respondents.

CONCLUSION

Petitioner has presented no legitimate basis to warrant review by this Court. Respondents respectfully request that petitioner's Petition For Writ of Certiorari be denied.

DATED: September 13, 2001

Respectfully submitted,

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